



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2018-0731]**

**RIN 1625-AA00**

### **Safety Zone; Intracoastal Waterway, Biscayne Bay, Miami, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain navigable waters of Biscayne Bay east of Bayfront Park in connection with aerobatic helicopter demonstrations sponsored by Red Bull in Miami, Florida. The safety zone is needed to protect persons, vessels, and the marine environment from potential hazards associated with the aerial demonstrations over Biscayne Bay. Entry of vessels or persons into this zone is prohibited, unless specifically authorized by the Captain of the Port Miami (COTP).

**DATES:** This rule is effective from 2:30 p.m. October 20, 2018, through 4 p.m. October 21, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0731 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Omar Beceiro, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone 305-535-4317, email omar.beceiro@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

|        |                                 |
|--------|---------------------------------|
| CFR    | Code of Federal Regulations     |
| DHS    | Department of Homeland Security |
| FR     | <b>Federal Register</b>         |
| NPRM   | Notice of proposed rulemaking   |
| §      | Section                         |
| U.S.C. | United States Code              |

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard received information regarding the size and location of the safety zone with insufficient time to publish an NPRM and receive public comments. Because of the potential hazards associated with the aerobatic demonstrations, the safety zone is necessary to provide for the safety of event participants and vessels transiting in proximity to the event area. For these reasons, it would be impracticable and contrary to the public interest to publish an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to potential safety hazards associated with the event.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with aerobatic helicopter demonstrations will be a safety concern for persons and vessels traveling underneath the demonstrations. This rule is needed to protect persons, vessels, and the marine environment in the navigable waters contained within the safety zone during aerial demonstrations.

### **IV. Discussion of the Rule**

This rule establishes a safety zone for three, 30-minute periods commencing at 2:30 p.m., 4 p.m., and 5:30 p.m. on October 20, 2018, and for three, 30-minute periods commencing at 12:30 p.m., 2 p.m., and 3:30 p.m. on October 21, 2018. The safety zone will cover certain navigable waters of Biscayne Bay east of Bayfront Park in Miami, FL. The duration of the safety zone is intended to protect persons, vessels, and the marine environment in these navigable waters during aerial demonstrations. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches

that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be temporarily interrupted and prevented from transiting a short section of the Intracoastal Waterway and Fisherman’s Channel in Miami, FL during demonstrations. The interruptions would affect a small designated area of Biscayne Bay for 30-minute periods, three times each day the safety zone is in effect. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 90 minutes (three, 30-minute periods) each day of the two-day event. During each 30-minute period the safety zone is in effect, boating traffic will be temporarily interrupted and prevented from transiting the Intracoastal Waterway or Fisherman's Channel east of Bayfront

Park in Miami, FL. The rule is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; and Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 165.T07-0731 to read as follows:

#### § 165.T07-0731 Safety Zone; Intracoastal Waterway, Biscayne Bay, Miami, FL

(a) Location. The following coordinates define the temporary safety zone located in Biscayne Bay, Miami, FL. All waters of Biscayne Bay contained within the following points: commencing at 25° 46' 22" N, 080° 10' 28" W; thence southwest to 25° 45' 33" N, 080° 10' 39"

W; thence northwest to 25° 45' 42" N, 080° 11' 05" W; then northeast to 25° 46' 34" N, 080° 10' 49" W; thence southeast along the shoreline to origin. All coordinates are North American Datum 1983.

(b) Definition. The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP in the enforcement of the regulated area.

(c) Regulations. (1) No person or vessel will be permitted to enter, transit, anchor, or remain within the regulated area unless authorized by COTP or a designated representative.

(2) Persons and vessels desiring to enter, transit, anchor, or remain within the regulated area may contact the COTP by telephone at 305-535-4313, or a designated representative via VHF radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

(d) Enforcement period. This rule will be enforced from 2:30 p.m. through 3 p.m., 4 p.m. through 4:30 p.m., and 5:30 through 6 p.m. on October 20, 2018, and 12:30 p.m. through 1 p.m., 2 p.m. through 2:30 p.m., and 3:30 p.m. through 4 p.m. on October 21, 2018.

Dated: September 18, 2018

M. M. Dean,  
Captain, U.S. Coast Guard,  
Captain of the Port Miami.

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